

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ARLENA MINTER on behalf of her
SON, C.M. AND DEANNA CAVER, on Behalf of
her son, T.C., Individually and on Behalf of all others
similarly situated,

Plaintiff,

v

OLGA DAZZO, in her official capacity as Director
of the Michigan Department of Community Health,
and DONALD BERWICK, in his official capacity as
Administrator of the Centers for Medicare and
Medicaid Services,

Defendants.

No. 2:10-cv-15018-PDB -RSW

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**MOTION TO EXTEND BRIEFING DEADLINE
AS TO PLAINTIFFS' MOTION TO CERTIFY CLASS**

Pursuant to F.R.Civ.P. 6, Defendant Dazzo,¹ as Director of the Michigan Department of Community Health (DCH) moves this Court for an extension of time to respond to Plaintiffs' Motion to Certify Class, stating:

1. This complaint was filed December 16, 2010, and amended January 5, 2011. Plaintiffs moved to certify the matter as a class action on January 21, 2011.
2. Federal Co-Defendant Donald Berwick has not yet filed an appearance or responded to the Complaint. According to the Docket, he was served on or about December 27, 2010, which means that his response is not due until February 25, 2011.
3. On January 25, 2011, the Court entered a Notice of Hearing that required State to respond to the Motion to Certify the Class on or before February 22, 2011, setting the hearing for April 27, 2011.
4. On February 7, 2011, after securing a short extension of time in which to respond, the State Defendant filed her Motion to Dismiss or for Summary Judgment, arguing *inter alia* that Plaintiffs may not pursue the action because: (a) minors cannot pursue litigation in their own names; and (b) they lack standing. The Court initially scheduled the hearing on this Motion for April 27, 2011.
5. On February 10, 2011, the Court rescheduled the hearing on the Motion to Certify the Class and the State Defendant's dispositive motion to June 22, 2011.
6. The State Defendant submits that it would be a better use of the Court's and the State's resources for the Court to decide the dispositive motion *before* hearing the Motion to Certify the Class.

¹ Ms. Dazzo replaced Janet Olszewski as the Director of the Department of Community Health.

7. If the Court still prefers to hear the pending motions on the same date, the State Defendant asks that its February 22, 2011 brief deadline be extended by at least three weeks, so that the State can determine the positions of co-Defendant Berwick (as to the Complaint itself) and Plaintiffs (in their response to the State Defendant's dispositive motion).

8. F.R.Civ.P. 6(b) permits the Court to "extend the time ... (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires."

9. On February 11, 2010, DCH's counsel contacted Plaintiffs' counsel to seek concurrence in this motion. Plaintiffs' counsel did not concur, necessitating this motion.

WHEREFORE, State Defendant Dazzo asks that the deadline for her response to Plaintiffs' Motion to Certify Class be extended to at least March 15, 2011.

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Attorney General

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Dated: February 15, 2011

CERTIFICATE OF SERVICE (E-File)

I hereby certify that on February 15, 2011, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ William R. Morris

Assistant Attorney General

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